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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC974

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Chartering Permits; Letters of Acknowledgment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs), and Chartering Permits for Atlantic highly migratory species (HMS) in 2014. Exempted fishing permits and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks (collectively known as HMS) from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection and public display. Chartering permits allow the collection of HMS on the high seas or in the Exclusive Economic Zone of other nations under certain conditions. Generally, EFPs and related permits will be valid from the date of issuance through December 31, 2014, unless otherwise specified, subject to the terms and conditions of individual permits.

DATES: Written comments on these activities received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

- Email: [nmfs.hms.efp2014@noaa.gov](mailto:nmfs.hms.efp2014@noaa.gov). Include in the subject line the following identifier: 0648-XC974.
- Mail: Craig Cockrell, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: (301) 713-1917.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 427-8503, fax: (301) 713-1917.

SUPPLEMENTARY INFORMATION: Issuance of EFPs and related permits are necessary for the collections of HMS for public display and scientific research to exempt them from regulations (e.g., fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) that may otherwise prohibit the collection. Collection for scientific research and display represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 et seq.). Regulations at 50 CFR 600.745 and 635.32 govern scientific research activity, exempted fishing, chartering arrangements, and exempted public display and educational

activities with respect to Atlantic HMS. Since the Magnuson-Stevens Act does not consider scientific research to be “fishing,” scientific research is exempt from this statute, and NMFS does not issue EFPs for bona fide research activities (e.g., research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (e.g., most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels bona fide research vessels. However, if the vessels have been contracted to only conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks are considered bona fide research vessels while engaged only in the specified research. NMFS requests copies of scientific research plans for these activities and acknowledges the activity by issuing an LOA to researchers to indicate that the proposed activity meets the definition of research. Examples of research conducted under LOAs include tagging and releasing of sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history studies.

Scientific research is not exempt from regulation under ATCA. NMFS issues SRPs which authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (e.g., tunas, swordfish, billfish, and some species of sharks). One example of research conducted under SRPs consists of scientific surveys of HMS conducted from the NOAA research vessels. EFPs are issued to

researchers collecting ATCA-managed species and conducting research from commercial or recreational fishing vessels. NMFS regulations concerning the implantation or attachment of archival tags in Atlantic HMS require scientists to report their activities associated with these tags. Examples of research conducted under EFPs include deploying pop-up satellite archival tags on billfish, sharks, and tunas to determine migration patterns of these species; conducting billfish larval tows to determine billfish habitat use, life history, and population structure; and determining catch rates and gear characteristics of the swordfish buoy gear fishery.

NMFS is also seeking public comment on its intent to issue display permits for the collection of sharks and other HMS for public display in 2014. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species, and collection of fish below the regulatory minimum size. NMFS established a 60-metric ton (mt) whole weight (ww) (approximately 3,000 sharks) quota for the public display and research of sharks (combined) in the final Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). Out of this 60 mt ww quota, 1.4 mt ww is set aside to collect sandbar sharks under a display permit and 1.4 mt ww is set aside to collect sandbar sharks under EFPs. Public display of dusky sharks is prohibited; NMFS considers collection of dusky sharks for research under an EFP and/or SRP on a case-by-case basis. The environment effects of these quotas have been analyzed in conjunction with other sources of mortality in the 2006 Consolidated HMS FMP and its amendments, and NMFS has determined that harvesting this amount for public display and scientific research will not have a significant impact on the stocks. The number of sharks harvested

for display and research has remained under the annual 60-mt ww quota every year since establishment of the quota. In 2012, approximately 39 percent of the sharks authorized for public display and scientific research purposes were actually harvested or discarded dead. Amendment 3 to the 2006 Consolidated HMS FMP also established a separate set-aside quota for smoothhound sharks (i.e., smooth dogfish, Florida smoothhounds, and Gulf smoothhounds) taken for research purposes, which would be in addition to the overall 60-mt ww quota for the public display and research of all sharks. However, the smoothhound shark research set-aside quota is not yet effective and their harvest resulting from research activities is not yet deducted from the set-aside quota for public display and research of sharks. NMFS will announce when such regulations become effective through a publication in the Federal Register.

For the coming year, NMFS is expecting an EFP application that would request the tagging of white sharks to track their migration patterns in the Northwest Atlantic. In 2012 and 2013, NMFS issued such a permit to conduct this tagging research on white sharks using the R/V Ocearch. After issuance of the permit, a few members of the public contacted NMFS about the use of the R/V Ocearch for tagging white sharks. They expressed concern about the relatively recent, but unrelated, incidental mortality of a white shark tagged off the coast of South Africa and requested that NMFS not issue research permits to authorize similar activities in U.S. waters. NMFS recognizes that this kind of research potentially could result in incidental mortality, although no such mortality has occurred in relation to this particular permit. Research such as this is important to better understand shark life history and provides valuable information for determining overall stock health. Further, it is in the researcher's best interest to ensure

that incidental mortality does not occur due to the high costs involved with installing the tags on sharks (i.e., a dead shark represents a lost tag and little or no data). Although not anticipated, if a disproportionate number of sharks were to die as a result of this or similar research activities, then the following year, NMFS would consider that information deciding whether to issue permits to those researchers or may require additional actions to minimize the mortality of the shark before issuing any permits. In the researcher's 2012 annual report to NMFS, they reported tagging 4 white sharks and 1 porbeagle shark without any mortality. NMFS requests public comment specific to this research during the comment period of this notice.

The majority of EFPs and related permits described within this annual notice relate to scientific sampling and tagging of Atlantic HMS within existing quotas, the impacts of which have been previously analyzed in various environmental assessments and environmental impact statements for Atlantic HMS. NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. Occasionally NMFS receives applications for research activities that were not anticipated or for research that is outside the scope of general scientific sampling and tagging of Atlantic HMS or, rarely, for research that is particularly controversial. Should NMFS receive such applications, NMFS will provide additional opportunity for public comment.

NMFS is also requesting comments on chartering permits considered for issuance in 2013 to U.S. vessels fishing for HMS while operating under chartering arrangements with foreign countries. NMFS has not issued any chartering permits since 2004. A chartering arrangement is a contract or agreement between a U.S. vessel owner and a

foreign entity by which the control, use, or services of a vessel are secured for a period of time for fishing for Atlantic HMS. Before fishing under a chartering arrangement, the owner of the U.S. fishing vessel must apply for a chartering permit. The vessel chartering regulations can be found at 50 CFR 635.5(a)(4) and 635.32 (e).

In addition, Amendment 2 to the 2006 Consolidated HMS FMP implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing permit program. Research fishery permit holders assist NMFS in collecting valuable shark life history data and data for future shark stock assessments. Fishermen must fill out an application for a shark research permit under the exempted fishing program to participate in the shark research fishery. Shark research fishery participants are subject to 100-percent observer coverage in addition to other terms and conditions. A Federal Register notice describing the objectives for the shark research fishery in 2014 and announcing that NMFS will be accepting applications is expected to publish in the near future.

The authorized number of species for 2013, as well as the number of specimens collected in 2012, is summarized in Table 1. The number of specimens collected in 2013 will be available when all 2013 interim and annual reports are submitted to NMFS. In 2012, the number of specimens collected was less than the number of authorized specimens for most permit types, with the exception of the number sharks taken under EFPs and Display permits. For sharks taken under EFPs, SRPs, and Display Permits 1,017 of the sharks caught were Atlantic sharpnose sharks collected during trips using longline gear. It is difficult to control the number and species of animals caught when using this gear type. Atlantic sharpnose sharks were not determined to be overfished nor

experiencing overfishing in a 2007 stock assessment; therefore, the overages in Table 1 for certain permit categories in 2012 are not expected to have negative ecological impacts on the stock. When added to the total number of sharks discarded dead and kept in 2012, the 1,017 Atlantic sharpnose sharks caught is within the established 60 mt quota for EFPs, SRPs, and display permits. A new stock assessment is underway and any changes to the Atlantic sharpnose stock status could limit the amount of this species that may be authorized for collection in the future.

In all cases, mortality associated with an EFP, SRP, Display Permit, or LOA (except for larvae) is counted against the appropriate quota. NMFS issued a total of 43 EFPs, SRPs, Display Permits, and LOAs in 2012 for the collection of HMS. As of November 14, 2013, NMFS has issued a total of 38 EFPs, SRPs, Display Permits, and LOAs.



Table 1. Summary of HMS Exempted Fishing Permits Issued in 2011 and 2012.  
 (“HMS” refers to multiple species being collected under a given permit type.)

	2012					2013		
Permit Type	Permits Issued**	Authorized Fish (Num)	Authorized Larvae (Num)	Fish Kept/Discarded Dead (Num)	Larvae Kept (Num)	Permits Issued**	Authorized Fish (Num)	Authorized Larvae (Num)
EFP								
HMS	3	163	0	0	0	3	229	0
Shark	10	1,118	0	1,145†	0	10	3,239	0
Tuna	5	687	0	0	0	5	327	0
Billfish	1	20	1,000	0	2,243	1	30	1,000
SRP								
HMS	4	83	0	1	0	3	941	0
Shark	4	2,160	0	134	0	3	2,132	0
Tuna	3	610	2,000	0	0	2	80	2000
Display								
HMS	2	126	0	0	0	2	94	0
Shark	4	115	0	170†	0	4	121	0
Total	36	5,082	3,000	4,485	2,243	32	7,193	3,000
LOA*								
Shark	7	2,140	0	699	0	6	2,770	0

\*LOAs are issued for bona fide scientific research activities involving non-ATCA managed species (e.g., most species of sharks). Collections made under an LOA are not authorized; rather this estimated harvest for research is acknowledged by NMFS. Permittees are encouraged to report all fishing activities in a timely manner.

\*\*2012 permits issued listed in Table 1 do not include permits issued solely for research related to the Deepwater Horizon/BP oil spill research in the Gulf of Mexico.

†All additional collections above the authorized levels were due to incidentally caught Atlantic sharpnose sharks.

Final decisions on the issuance of any EFPs, SRPs, Display Permits, and Chartering Permits will depend on the submission of all required information about the proposed activities, NMFS review of public comments received on this notice, an applicant's reporting history on past permits issued, any prior violations of marine resource laws administered by NOAA, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs as assessed in the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, 2011 Bluefin Tuna Specifications, and 2012 Swordfish Specifications.

Authority: 16 U.S.C. 971 et seq. and 16 U.S.C. 1801 et seq.

Dated: November 15, 2013

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Kelly Denit,  
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